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FISCAL IMPACT REPORT

SPONSOR Trujillo, CA **ORIGINAL DATE** 2/12/15
LAST UPDATED _____ **HB** 330
SHORT TITLE Electric Coop Lines Through Tribal Land **SB** _____
ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	No Fiscal Impact	No Fiscal Impact		

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 330 creates a new section of the Rural Electric Cooperative Act to remove the obligation for a rural electric cooperative to serve persons located on lands not subject to the Public Regulation Commission's (PRC) jurisdiction, including lands under the jurisdiction or control of a tribe. However, a cooperative shall provide service if the tribal government agrees the provision of the service will be according to the same policies, terms, and conditions that are applicable to the cooperative's other members. The bill defines "tribe" as "an Indian nation, tribe or pueblo located in whole or in part within the state."

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

New Mexico's electric distribution cooperatives (coops) are nonprofit membership corporations organized pursuant to the Rural Electric Cooperative Act yet are also subject to the legal and regulatory scheme of the Public Utility Act because they fall under the definition of a "public

utility.” Therefore, the coops are required to serve the general public throughout their service areas in exchange for PRC protection from competition by other public utilities. That obligation to serve currently extends throughout the state and does not exempt tribal or federal lands.

PRC reports elimination of a coop’s obligation to serve on tribal lands may eliminate the agency’s authority to establish a service area for a coop that includes tribal lands, thereby jeopardizing the coop’s concomitant territorial protection or exclusivity on those lands and further, thereby removing or limiting PRC’s authority to resolve service territory disputes for a coop that involve tribal lands. Additionally, elimination of the coop’s obligation to serve its member-customers may interfere or conflict with the rights of its members to electric service.

PRC also notes the second sentence of the bill, reinstating a coop’s obligation to serve on tribal lands “if the tribal government agrees that the provision of the service will be according to the same policies, terms and conditions that are applicable to the cooperative’s other members,” creates uncertainty whether “policies” refers to the board policies of the coop or whether “policies, terms and conditions” are intended to refer to the rates, rules, and forms [tariff] of a coop that are authorized by PRC and subject to continuing PRC oversight. It is unclear what tribal government agreement adds to a coop’s existing obligation to provide service to its member-customers -- whether those member-customers are also tribal members or located on tribal lands -- in accordance with its board policies and with PRC-approved terms and conditions. It is also unclear what control tribal governments have over the provision of electric service by a cooperative to tribal members as retail customers or to other retail customers located on tribal lands. Finally, to the extent that the language of the bill limits or eliminates the tribal government’s right to compensation for the use of its lands as rights-of-way for electric facilities, such effect may be pre-empted by federal law. See 25 U.S.C. § 325 of the Indian Right-of-Way Act, codified in part at 25 U.S.C. §§ 322-328; see also 25 C.F.R. Part 169.12.

TECHNICAL ISSUES

Elimination of a cooperative’s obligation to serve may conflict with the cooperative’s obligation to obtain PRC approval pursuant to Section 62-9-5 NMSA 1978 before it abandons service rendered by all or any portion of its facilities.

PRC’s analysis reports an issue with the phrase “lands not subject to the public regulation commission’s jurisdiction” when “lands,” in and of themselves, are not subject to PRC jurisdiction; instead, the agency regulates public utilities and their rates and service.

JC/bb/je